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OFFICE OF PETITIONS

In re Application of :
Anderson and Young :
Application No. 10/767,459 :
Filed: January 20, 2004 :
Attorney Docket No. P-6464-US2 :
For: **SYSTEM AND METHOD FOR TREATING** :
TISSUE :

: DECISION REFUSING STATUS

: UNDER 37 CFR 1.47(b)

This is a decision on the petition under 37 CFR 1.47(b), filed November 9, 2004.

The petition under 37 CFR 1.47(b) is **dismissed**.

Any request for reconsideration under this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Failure to respond will result in the abandonment of this application. Any response should be titled "Request for Reconsideration of Petition Under 37 CFR 1.47(b).

The above-identified application was filed on April 17, 2002, without an executed oath or declaration or filing fee. Accordingly, a "Notice to File Missing Parts Nonprovisional Application" (the "Notice") was mailed on June 15, 2004, requiring an executed oath or declaration and a surcharge for the late filing of the oath or declaration, payment of the filing and additional claim fees. The instant petition was filed on November 9, 2004, responsively, along with a request for an extension of time within the third month.

A grantable petition under 37 CFR 1.47(b) requires:

- (1) proof that the non-signing inventor(s) cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

- (3) the petition fee,
- (4) a statement of the last known address of the non-signing inventor,
- (5) proof of proprietary interest, and
- (6) a showing (statement) that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

The instant petition lacks items (1), (2), and (6) as set forth above.

As to item (1), petitioner has not established that inventor Young has either refused to execute the declaration or is unavailable to execute the declaration. It is noted that the statement of Guy Yonay's indicates that when inventor Anderson expressly refused to sign the declaration he was also speaking for inventor Young. Absent a representation from inventor Young that inventor Anderson is authorized to speak on his behalf and to represent him, inventor Anderson's express refusal to sign the declaration is only attributable to inventor Anderson. Accordingly, in order to satisfy item (1) above, petitioner will have to establish that inventor Young has either expressly or constructively refused to execute the declaration or is determined to be unavailable to do so after a diligent effort made by the petitioner.

As to item (2), the declaration filed with the instant petition cannot be accepted until the assignee demonstrates that it has the power to prosecute the application. Section 409.03(b) of the *Manual of Patent Examining Procedure* provides, in pertinent part, that, "[w]here the oath or declaration is being signed on behalf of an assignee, see MPEP 324." Section 324 of the Manual of Patent Examining Procedure cites 37 CFR 3.71(c) which states that, "[a]n assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee." Petitioner should note that 37 CFR 3.73 requires that before an assignee can take action in a patent matter, the assignee must establish ownership of the patent property in accordance with 37 CFR 3.73(b)(1)(i) or (ii). No statement or certificate meeting the requirements of 37 CFR 3.73 was found with the petition. Petitioner must properly establish ownership of the patent property before the assignee will be granted authority under 37 CFR 1.47(b) to prosecute the application. Enclosed is a "Statement Under 37 CFR 3.73(b)" that petitioner may use to satisfy this requirement.

As to item (6), petitioner has not established that a filing date is necessary to preserve the rights of the party or prevent irreparable harm. This showing may be made by a statement to that effect and should accompany any renewed petition filed. See MPEP 409.03(g).

Deposit account 05-0649 will be charged \$130.00 for the petition fee.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

Telephone inquiries should be directed to the undersigned at (571) 272-3222.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Form PTO/SB/96—"Statement Under 37 CFR 3.73(b)"